

SUMMARY REPORT OF INVESTIGATION

I. EXECUTIVE SUMMARY

Date of Incident:	21 December 2017
Time of Incident:	1:37 AM
Location of Incident:	XXXX N. Drake Ave.
Date of COPA Notification:	21 December 2017
Time of COPA Notification:	3:46 AM

On December 21, 2017 at approximately 1:37 AM, at or near XXXX N. Drake Ave., Subject 1 was curbed by Officers A and B for No Valid State Registration (expired license plates). While Officer B spoke to the driver of the vehicle in question on the driver's side of the car, Officer A inspected the inside of the vehicle with a flashlight from the passenger side of the car. Officer A noticed an object that appeared to be a firearm, in plain view in the center console. Officer A then asked Subject 1 to open the passenger side door and/or window and to turn off his vehicle, several times, so that he could inspect the item.

Subject 1 eventually unlocked the passenger side door, with some resistance, and Officer A removed the item from the console. Officer A's body worn camera gave a clear view of the item, which resembled the butt of a firearm. The item turned out to be a torch lighter. After inspecting the item Officer A returned the item to the front passenger seat and closed the passenger side door. Although Subject 1 claimed that Officer A searched the passenger side seat, video confirmed that no further search of the vehicle was conducted. Subject 1 was issued 3 citations: no state registration, no insurance, and no city sticker. In an interview with COPA, Subject 1 claimed that Officer A illegally searched his vehicle and verbally threatened him.

II. INVOLVED PARTIES

Involved Officer #1:	Officer A, star# XXXXX, employee ID# XXXXXX, Date of Appointment XX February XXXX, Police Officer, Unit of Assignment-XXX, DOB-XX May XXXX, Male, WWH
Involved Officer #2:	Officer B, star# XXXXX, employee ID# XXXXXX, Date of Appointment- XX February XXXX, Police Officer, Unit of Assignment-XXX, DOB-XX December XXXX, Male, WWH
Subject #1: Subject 1	DOB-XX October XXXX, Male, WWH

III. ALLEGATIONS

Officer	Allegation	Finding
Officer A	<p>1. Illegally searched Subject 1's vehicle when he asked Subject 1 to open the passenger side of the vehicle so he could inspect an item thought to be a firearm in violation of Rule 1, the Fourth Amendment of the United States Constitution and Section 6 of the Illinois Constitution.</p> <p>2. Threatened Subject 1 when he said he would make Subject 1 open the door if he did not comply with his order to do so.</p>	UNFOUNDED
		UNFOUNDED

IV. APPLICABLE RULES AND LAWS

Rules

1. **Rule 1:** prohibits, "Violation of any law or ordinance."
2. **Rule 9:** prohibits, "Engaging in any unjustified verbal or physical altercation with any person, while on or off duty."

Federal Laws

1. **The Fourth Amendment:** states, "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

State Laws

1. **Section 6 of the Illinois Constitution:** states, "The people shall have the right to be secure in their persons, houses, papers and other possessions against unreasonable searches, seizures, invasions of privacy or interceptions of communications by eavesdropping devices or other means. No warrant shall issue without probable cause, supported by affidavit particularly describing the place to be searched and the persons or things to be seized."

V. INVESTIGATION¹

a. Interviews

Interview of Subject 1²

During a recorded interview on January 15, 2018, Subject 1 stated that he was pulled over by the police because of his registration. Subject 1 said that when the officer on the passenger side was looking into his car with a flashlight, he saw what appeared to be a weapon in the center console. Subject 1 said it was a lighter, but the officers continued to ask him to open the door and turn off the car. Subject 1 said he told the officers he did not have to open the door. Subject 1 also said that the officer then told him to open the door or he would make Subject 1 open it, in a voice that was growing louder. After Subject 1 finally opened the window, the officer on the passenger side reached in and opened the passenger side door, removed the item in question from the center console, and confirmed that it was a torch lighter. Subject 1 claimed the officer then searched the seat. After that, both officers left and went to write Subject 1's tickets. Subject 1 felt the officer wrongfully unlocked the door and threatened him by saying he would make him open the door.

b. Digital Evidence³

A Body Worn Camera Video was recorded by Officer A on December 21, 2017 at about 1:37 AM. Officer A stated that he saw what appeared to be a weapon in the center console; Officer A repeatedly asked Subject 1 to open the door, open the window, and shut off his car. Finally, Officer A stated, "Turn the car off. Roll the window down, or I can open it myself." Officer A explained that this was for officer safety, but Subject 1 did not initially comply. When Subject 1 finally opened the window, Officer A reached in, opened the passenger side door and removed the item from the console with his hand. Officer A confirmed that it was a torch lighter. Officer A placed the lighter on the passenger side front seat and shut the passenger side door. Officer A later stated that the lighter looked like a type of handmade gun that one may attempt to get onto an airplane.

A Body Worn Camera Video was recorded by Officer B on December 21, 2017 at about 1:37 AM. Officer B's video is consistent with that of Officer A in that it is apparent that Subject

¹ COPA conducted a thorough and complete investigation. The following is a summary of the material evidence gathered and relied upon in our analysis.

² Attachment 10.

³ Attachment 12.

1 was given multiple commands to comply with the officers' orders to open the passenger side window and/or door, and to turn off the vehicle. Officer B wrote Subject 1's tickets, explained the tickets to him, and told him that in the future he should comply with police officer commands.

VI. ANALYSIS

COPA recommends **Allegation #1**, that Officer A illegally searched Subject 1's vehicle when he asked Subject 1 to open the passenger side of the vehicle so he could inspect an item thought to be a firearm in violation of Rule 1, the Fourth Amendment of the United States Constitution and Section 6 of the Illinois Constitution, be **Unfounded**.

The search performed in this case was proper based on *People v. Smith*, which states, "The usual traffic stop is considered a Terry stop rather than a formal arrest. When an officer has properly stopped a vehicle for a minor traffic violation and reasonably believes, based on specific and articulable facts, that his safety or the safety of others is in danger, then he may conduct a limited search of an individual for weapons. The sole purpose of the search is to protect the officer, not to gather evidence. After a Terry stop, the officer may discover items either as a result of a frisk or by seeing them in plain view or during the course of a search by consent. If those items would justify a reasonable person to believe that the car contained contraband, there would then be probable cause to search the rest of the car."⁴ The item in question was in plain view and genuinely appeared to be a firearm. Further, Officer A limited his search to that item only.

COPA recommends **Allegation #2**, that Officer A threatened Subject 1 when he said he would make Subject 1 open the door if he did not comply with his order to do so in violation of Rule 9, be **Unfounded**.

Based on the Body Worn Camera Video of Officer A, it was determined that Officer A actually said, "Turn the car off. Roll the window down or I can open it myself," but that was only after Subject 1 continually failed to comply with the officers' orders to open the door, open the window and turn off the vehicle.

⁴ *People v. Smith*, 734 N.E.2d 1039 (Ill. App. Ct. 2000.)

VII. CONCLUSION

Based on the analysis set forth above, COPA makes the following findings:

Officer	Allegation	Finding
Officer A	<ol style="list-style-type: none">1. Illegally searched Subject 1's vehicle when he asked Subject 1 to open the passenger side of the vehicle so he could inspect an item thought to be a firearm in violation of Rule 1, the Fourth Amendment of the United States Constitution and Section 6 of the Illinois Constitution.2. Threatened Subject 1 when he said he would make Subject 1 open the door if he did not comply with his order to do so in violation of Rule 9.	UNFOUNDED UNFOUNDED

Approved:

COPA Deputy Chief Administrator
Deputy Chief Administrator – Chief Investigator

Date

Appendix A**Assigned Investigative Staff**

Squad#:	X
Investigator:	COPA Investigator #XX
Supervising Investigator:	COPA Supervising Investigator, #XX
Deputy Chief Administrator:	COPA Deputy Chief Administrator